

AO 241 (Rev. 5/85)

PETITION UNDER 28 USC § 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

FILED
U.S. DISTRICT COURT
DISTRICT OF MASS.

United States District Court

Name MICHAEL A SUBENKO

District MASSACHUSETTS

Place of Confinement

Prisoner No. W65867

Case No. 8760

04-10023 GAO

M.C.I. NORFOK, NORFOK MA, 02056, 2 CLARK ST

Name of Petitioner (include name under which convicted)
MICHAEL A. SUBENKO

Name of Respondent (authorized person having custody of petitioner)
BROCKTON DISTRICT ATTORNEY'S
OFFICE, BROCKTON SUPERIOR
COURT ATTORNEY GENERAL'S
OFFICE

The Attorney General of the State of:

THOMAS F. RILEY

PETITION

1. Name and location of court which entered the judgment of conviction under attack BROCKTON
SUPERIOR COURT, 72 Belmont St BROCKTON, MA, 02301
2. Date of judgment of conviction JANUARY 11, 1999
3. Length of sentence 12-15 with ten yrs probation, and ten yrs probation
suspended and 2 1/2 yrs to serve suspended
4. Nature of offense involved (all counts) MANSLAUGHTER, MOTOR VEHICLE HOMICIDE,
ASSAULT AND BATTERY, DW AND RECEIVING
STOLEN PROPERTY
5. What was your plea? (Check one)
 - (a) Not guilty ☒
 - (b) Guilty ☐
 - (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

6. If you pleaded not guilty, what kind of trial did you have? (Check one)
 - (a) Jury ☒
 - (b) Judge only ☐

7. Did you testify at the trial?
Yes ☐ No ☒

8. Did you appeal from the judgment of conviction?
Yes ☒ No ☐

AMOUNT \$ 52918
SUMMONS ISSUED N/A
LOCAL RULE 4.1 1
WAIVER FORM 1
DATE ISSUED 1/7/04
FILED F.O.M.

SCANNED

DATE: 1-1-04

BY: FOM

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9. If you did appeal, answer the following:

- (a) Name of court NEW COURT HOUSE
APPEALS COURT 1500 PEMBERTON SQ, BOSTON
- (b) Result The judgement on the manslaughter, assault and battery
by means of a dangerous weapon, and receiving a stolen motor vehicle are
- (c) Date of result and citation, if known (affirmed) The judgement on the vehicle
Homocide indictment is reversed and the
- (d) Grounds raised NOT SURE (Verdict is set aside, and the indictment
is dismissed)

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

- (1) Name of court SUPREME JUDICIAL COURT 1300 NEW COURT HOUSE PEMBERTON SQ
BOSTON MA 02108
- (2) Result The judgement on the manslaughter, assault and battery by means
of a dangerous weapon and receiving stolen motor vehicle are affirmed
The judgement on the vehicle Homocide is reversed and the verdict is
- (3) Date of result and citation, if known set aside
- (4) Grounds raised NOT SURE

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

- (1) Name of court _____
- (2) Result _____
- (3) Date of result and citation, if known _____
- (4) Grounds raised _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?
Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court NEW COURT HOUSE
SUPREME JUDICIAL COURT 1300 PEMBERTON SQ BOSTON MA, 02108
- (2) Nature of proceeding Whether the court erred in allowing the indictment for vehicular homicide
to be amended to exclude the word Reckless, after the closed evidence and prior to giving
jury instructions. Whether the court erred in instructing the jury whether the court erred
- (3) Grounds raised in allowing prior bad acts testimony and, whether the court
erred in filing. As opposed to dismissing, a lesser included vehicular homicide conviction
after a guilty verdict was also returned on a manslaughter indictment

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(4) Did you receive an evidentiary hearing on your petition, application or motion?
 Yes ☐ No ☐ *NOT SURE*

(5) Result *NOT SURE*

(6) Date of result *NOT SURE*

(b) As to any second petition, application or motion give the same information:

(1) Name of court *NOT SURE*

(2) Nature of proceeding *NOT SURE*

(3) Grounds raised *NOT SURE*

(4) Did you receive an evidentiary hearing on your petition, application or motion?
 Yes ☐ No ☐

(5) Result *NOT SURE*

(6) Date of result *NOT SURE*

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☒ No ☐

(2) Second petition, etc. Yes ☒ No ☐

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

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For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, you should raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: CONVICTION OBTAINED BY USE OF EVIDENCE OBTAINED PURSUANT TO AN UNLAWFUL ARREST.

Supporting FACTS (state briefly without citing cases or law): Upon coming out of coma in the hospital, I am ^{unaware} of ever being arrested, knoware gave me miranda rights. Upon reading years later newspaper clippings apparently I was arrested in a drug induced coma and in a halo in traction

I never signed a power of attorney to sign my rights over to anyone, no law force or agency of officer ever informed or stated I was under arrest

B. Ground two: CONVICTION OBTAINED BY A VIOLATION OF THE PRIVILEGE AGAINST SELF-INCRIMINATION, CONVICTION OBTAINED BY ACTION OF A GRAND ~~JURY~~ OR PETIT JURY WHICH WAS UNCONSTITUTIONALLY SELECTED AND IMPANELED

Supporting FACTS (state briefly without citing cases or law): I was never read my miranda rights I was never arrested, remained hospitalized for months. prosecution failed to bring evidence to the grand jury to get an indictment. prosecution did not indict codefendant, grand jury was impaired due to influence of others, codefendants family is a employee of a branch of the united states government, due to this conflict plaintiff was denied his constitution rights of due process. Attorney picked associates of police agency for jury knowing prosecution had influence over them.

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C. Ground three: Denial of effective assistance of counsel

Supporting FACTS (state briefly without citing cases or law): Counsel was aware defendant never received memorandum rights, counsel was aware that petition was not stable to stand trial, counsel claimed that competency was not a big thing on the grounds that counsel failed to comply with petition's constitutional right as provided by law. Counsel did not comply with his own professional ethics, counsel failed to inform the ~~judge~~ ^{judge} of client's mental state, counsel failed to inform the court of his reservation of his client's ability to stand trial.

D. Ground four: Denial of right of appeal

Supporting FACTS (state briefly without citing cases or law): Due to prosecution's opinion crime was premeditated, appeal was denied on grounds that prosecution knew petition was aware that the victim was going to die in the car accident, prosecution states that petition's actions were premeditated, prosecution claims there was no grounds to charge petition with vehicular homicide, appeal denied for no merit.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state briefly what grounds were not so presented, and give your reasons for not presenting them: Miranda rights, competency and ineffective counsel was not set forth in appeals, do to all retained and appointed counsel, conflict of interest to cover up prosecutors conspiracy to hide capital crime of victim, prosecution is aware that state troopers committed capital crime.

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
Yes ☒ No ☐

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing RICHARD BARRETT, JEFFREY DENNER
FRANK MONDANO

99 Summer St BOSTON, MA, 02210

(b) At arraignment and plea As far as I know attorney
Richard Barrett was there, I was in a coma and
drug induced.

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(c) At trial FRANK MONDANO 99 SUMMER ST BOSTON MA,
02210

(d) At sentencing FRANK MONDANO 99 SUMMER ST BOSTON MA,
02210

(e) On appeal JENNIFER PETERSEN 44 SCHOOL ST SUITE 600
BOSTON MA, 02108

(f) In any post-conviction proceeding JENNIFER PETERSEN @ 44 SCHOOL ST
SUITE 600 BOSTON MA, 02108

(g) On appeal from any adverse ruling in a post-conviction proceeding JENNIFER PETERSEN
44 SCHOOL ST BOSTON MA, 02108

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☒

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

DECEMBER 21, 2003
(date)

Michael Subento
Signature of Petitioner

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HABEAS CORPUS BY A PERSON IN STATE CUSTODY

(If petitioner is attacking a judgment which imposed a sentence to be served in the future, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. § 2255, in the federal court which entered the judgment.)

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Instructions—Read Carefully

- (1) This petition must be legibly handwritten or typewritten, and signed by the petitioner under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.
- (2) Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) Upon receipt of a fee of \$5 your petition will be filed if it is in proper order.
- (4) If you do not have the necessary funds for transcripts, counsel, appeal, and other costs connected with a motion of this type, you may request permission to proceed *in forma pauperis*, in which event you must execute form AO 240 or any other form required by the court, setting forth information establishing your inability to pay the costs. If you wish to proceed *in forma pauperis*, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution. If your personal account exceeds \$_____, you must pay the filing fee as required by the rules of the district court.
- (5) Only judgments entered by one court may be challenged in a single motion. If you seek to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions as to each court.
- (6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.
- (7) When the petition is fully completed, the original and at least two copies must be mailed to the Clerk of the United States District Court whose address is _____.
- (8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.